IN THE HIGH COURT OF SOUTH AFRICA NOT REPORTABLE

EASTERN CAPE, PORT ELIZABETH

Case No.: 1684/2011
Date Heard: 26 January 2012
Date Delivered: 7 February 2012

In the matter between:

ALLAN HENDRICKS BODY CORPORATE Applicant

and

TRAFALGAR PROPERTY MANAGEMENT (PTY) LTD First Respondent

TRAFALGAR FINANCIAL SERVICES (PTY) LTD Second Respondent

JUDGMENT

EKSTEEN J:

[1] The applicant is the body corporate of a sectional title scheme known as "Allan Hendricks". The first respondent is the managing agent for the applicant. During April 2009 the second respondent entered into a "Levy Solution Agreement" (herein referred to as the "loan agreement") with the applicant and the first respondent in terms of which the second respondent undertook to lend and advance money to the applicant upon certain conditions set out in the loan agreement. The relationship between the applicant and the respondents has since soured. The applicant now seeks the following relief:

“2.1 That the loan agreement between the Second Respondents and Applicant be declared invalid and of no force and effect, that the Second Respondent be interdicted and restrained from advancing and or lending any further monies to the Applicant in terms of the Loan Agreement, and finally that the Second Respondents be interdicted from receiving any further monies from the Applicant in terms of the Loan Agreement.

2.2 That the Management Agreement with the First Respondent is hereby deemed to be cancelled with effect from 31 March 2011.

2.3 The First Respondent is ordered to pay all moneys collected by it on behalf of the Applicant with effect from 31 March 2011 over to the Applicant.

2.4 That First Respondent and/or the Second Respondent is interdicted and restrained from taking legal action against any of the defaulting residents and/or property owners in terms of the Management Contract for outstanding levies, including the charging of interest on overdue levy accounts until an independent audit for individual residents and/or property owners determines actual indebtedness.”

The history

[2] It is common cause that the financial affairs of the applicant deteriorated over the years, largely because of a culture of non-payment of levies by members, and the applicant fell deeper and deeper into debt. During or about April 2009 the applicant was, by way of example, indebted to the Nelson Mandela Bay Municipality in the sum of

R436 565,54. The property in Allan Hendricks was falling into disrepair and the applicant was in need of financial assistance. These circumstances gave rise to the loan agreement. I pause to mention that there is considerable dispute relating to the manner in which the loan agreement came about. I shall revert below to the factual disputes.

<u>The material terms of the agreement</u>

[3] The loan agreement provides for an initial advance to be made by the second respondent to the applicant within three days of the signature of the agreement and monthly advances thereafter. The initial advance is defined in the loan agreement as meaning "an amount equal to the levies which are due and unpaid as of the date of signature and includes any interest accrued and unpaid thereon, as determined in accordance with" the loan agreement. This clause strives to provide access for the applicant to the money of which it has been deprived by the default of its members.

[4] The monthly advances referred to is similarly defined as meaning "the aggregate of the levies payable by the owners to the body corporate in a calendar month". In this manner the loan agreement seeks to ensure that the applicant will receive a monthly income which it is entitled to from its members.

[5] In terms of clause 8.2 of the loan agreement the loan was repayable "from time to time on the date of receipt of payments of levies from the owners from time to time, limited … to the amount of such receipt from such owners."

[6] The agreement then proceeds to provide as follows:

> "8.3 Without detracting from clause 8.2, and in addition thereto, to the extent that:
>
> 8.3.1 the whole of part of an advance is owing by the Body Corporate to TFS; and
>
> 8.3.2 that advance or the outstanding part thereof is represented by funds lent by TFS to the Body Corporate in respect of levies payable by an owner to the Body Corporate (whether under the initial advance, the monthly advances or any special levy advance/s); and
>
> 8.3.3 any of those levy remain owing by that owner; and
>
> 8.3.4 the applicable immovable property in respect of which that owner is registered as the owner or holder thereof is sold in execution …; and
>
> 8.3.5 the proceeds received by TFS from that sale in execution are less than the outstanding amount of that advance …
>
> the Body Corporate will pay the outstanding balance of that advance to TFS within 10 (ten) days of the date of that sale in

> execution or if TFS so elects, within such longer period as TFS may notify the Body Corporate in writing".

[7] TFS is a reference to second respondent. The money loaned is accordingly repayable primarily from the collection of levies, both current and arrear. To this end the applicant resolved in 2008, prior to the conclusion of the loan agreement that moneys owed by its members to it would bear interest at 6% above the prime rate.

[8] In terms of clause 10 of the loan agreement the applicant authorised and instructed the first respondent "solely and exclusively, to collect the levies" and the first respondent accepted such authorisation on the terms and conditions set out in the loan agreement. Clause 10.2 proceeds as follows:

> "10.2 For as long as this sole and exclusive authority and instruction endure, the Body Corporate shall not:
>
> 10.2.1collect nor shall it be entitled to collect the levies; nor
>
> 10.2.2 authorise, instruct nor appoint nor allow any other person or agent (other than TPM) to collect the levies".

TPM is a reference to the first respondent.

[9] Clause 15.1 of the loan agreement records the security given for the loan as follows:

> "15.1 As security for the Body Corporate's indebtedness to TFS pursuant to the loan, the Body Corporate hereby cedes to TFS (as a cession in security and not as an out and out cession) all of the ceded claims, as continuing covering security for the due and proper payment on demand and the due and proper performance of the secured indebtedness, upon and subject to all of the terms and conditions contained in the cession. The cession will remain extant for as long as the Body Corporate remains indebted to TFS in terms of this agreement."

[10] Finally the contract provides as follows in respect of the duration and termination of the loan agreement:

> "19.1 This agreement insofar as it relates to TFS and the Body Corporate shall commence on the date of signature hereof and shall continue for as long as the Body Corporate remains indebted to TFS in terms of this agreement.
>
> 19.2 This agreement insofar as it relates to TPM and the Body Corporate shall commence on the date of signature hereof and shall continue for a period of 1 (one) year from the date of signature hereof, whereafter it will automatically be extended by revolving successive periods of 30 (thirty) days each unless it is terminated in accordance with clause 19.3.

19.3 After the expiry of a period of 1 (one) year from the date of signature hereof, each of TPM and the Body Corporate shall be entitled on written notice to the other of them to cancel this agreement insofar as it relates to TPM and the Body Corporate (but not, for the avoidance of doubt, this agreement insofar as it relates to TFS and the Body Corporate), provided that:

19.3.1 The Body Corporate shall not be entitled under this clause 19.3 to cancel this agreement insofar as it relates to TPM and the Body Corporate unless and until the Body Corporate's entire indebtedness to TFS has been discharged; and

19.3.2…

19.4 The Body Corporate has the right to terminate this agreement between TFS and the Body Corporate in terms of section 122 of the National Credit Act."

<u>Disputes of fact</u>

[11] The agreement was concluded on 9 April 2009 and the second respondent duly proceeded to advance sums of money to the applicant in accordance with the agreement. Notwithstanding these advances the applicant contends that matters relating to the financial welfare of the applicant did not improve. On the contrary matters are now even worse

than they were at the time. This is not in dispute, however, each party blames the conduct of the other for this state of affairs. It is as a result hereof that the application was launched.

[12] The papers filed are replete with material disputes of fact. The approach to material disputes of fact in application proceedings was authoritatively stated by Corbett JA, as he then was, in ***Plascon-Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd*** 1984 (3) SA 623 (A) at 634H-635B:

> "It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact. ... If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)*(g)* of the Uniform Rules of Court ... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks ... ."

[13] In the present matter neither party has applied for the matter to be referred to oral evidence. I shall accordingly consider the evidence in accordance with the approach set out above.

Validity of loan agreement

[14] In respect of the attack upon the validity of the loan agreement one Jaggers has deposed to the founding affidavit on behalf of the applicant. In the founding affidavit Jaggers states as follows:'

> '10. Upon investigation we discovered that the matter of a loan agreement with the Second Respondent had never been formally tabled in any meeting of the Applicant body or of its trustees. No special resolution was taken by the outgoing trustees to enter into the agreement either. …
>
> 11. One of the former trustees, Aubrey Chapman, alleges that the trustees did not discuss the agreement before they signed it. If he is to be believed, the resolution and the loan agreement was signed on the same day. He further alleges that the trustees did not fully understand that the agreement was a loan agreement. He describes what amounts to a cession agreement since the outgoing trustees were brought under the impression that the Second Respondent was buying the "debt books" of the Applicant. …'

[15] An affidavit attested to by the said Chapman also annexed. The material portion of Chapman's statement reads as follows:

'7. In March 2009 I was called to Trafalgar Property Management's offices along with E Stevens, J Korkie and F Cummings where we met with Mr. Michael Schaefer from that company in order to sign a document that we were informed would benefit the complex. It was explained to us that we had to sign this document as trustees of the body corporate.

8. …

9. Mr. Schaefer briefly explained to us that the document that we were about to sign was an agreement in terms of which Levy Solutions would buy the "debt books" from Allan Hendricks Body Corporate.

10. At the time I understood this to mean that Levy Solutions would buy the existing debt of the levy defaulters of the body corporate.

11. The reason for this was that at the time the income of the body corporate could not cover all of its expenses because many people defaulted on levy payments. The general idea was that the outstanding debt had to be claimed from those who were responsible for the backlog, ergo the levy defaulters.'

[16] This version of events, however, is strenuously disputed. On behalf of the respondents Mr Schaefer contends firstly that the Levy Solution Agreement was something that the trustees had asked for, it not a matter

of the second respondent foisting its product upon the body corporate. He contends that once the agreement had been drafted a meeting of the trustees was convened where the loan agreement was fully discussed. He says that he personally attended the meeting of trustees of the applicant which was attended by Mr F Cummings, J Korkie and E Chapman, in their capacity as trustees of the applicant and one E. Stevens the chairman of the applicant. Mr Schaefer states that he personally fully explained the contents of the agreement and how it works in the meeting which lasted some two to three hours. It is at this meeting that the trustees signed the agreement. Schaefer's version of the meeting is confirmed by one Tudehope, the Port Elizabeth branch manager of the first respondent who was also present at the meeting.

[17] The applicant did not annex a copy of the agreement to the founding papers, however, Schaefer annexed one to his answering affidavit. Annexed to the agreement and included in it is a Schedule A3, a document headed "Resolution of the Trustees of Allan Hendricks Body Corporate". It bears the date 26 March 2009 and records two resolutions. The first of these resolutions is of significance and reads as follows:

> "WHEREAS:
>
> It has been resolved by the Trustees of the Body Corporate, in terms of the powers conferred on the Body Corporate by Section 38(e) of the

> Sectional Titles Act 95/1996, to enter into a Levy Solution Agreement with TRAFALGAR FINANCIAL SERVICES (PTY) LIMITED for the monthly loan of the levy amounts and any special levy amounts that the trustees may wish to borrow from TRAFALGAR FINANCIAL SERVICES (PTY) LIMITED."

The resolution was signed by all four trustees, including Chapman.

<u>Common law attack on validity of the loan agreement</u>

[18] Mr ***Abrahams***, who appears in this matter on behalf of the applicant, submits, on the strength of the above stated averments by Chapman that the contract "falls to be set aside on the basis that there was no consensus between the parties". The lack of consensus, he submits, came about as a result of the alleged misrepresentation by Schaefer as to the nature of the contract. He argues that the applicant would not have entered into the agreement at all if it had known that the second respondent envisaged a loan agreement.

[19] Mr ***Abrahams'*** submissions are founded on the unequivocal acceptance of the correctness of the assertions of Chapman. Adopting the approach, however, to disputes of fact in motion proceedings as set out in ***Plascon-Evans Paints*** (*supra)* I think that the evidence upon which the application falls to be adjudicated establishes that the

agreement came about as a result of the request of the applicant. Its content was fully explained at great length and the trustees resolved to accept it. The resolution signed by the trustees and annexed to the agreement as Schedule A3 is brief but crystal clear. What the trustees intended was a loan agreement.

[20] There is a second difficulty with the averments of Chapman. Chapman was one of four trustees who signed the agreement. He avers that he laboured under a misconception as to the nature of the agreement. The other three trustees have not come out in support of him and none of the others have attested to confirmatory affidavits. I do not think that where multiple representatives signed the agreement the fact that one of those representatives labours under some misconception as to the nature of the agreement can lead to the conclusion that all, or the majority of them, laboured under the same misconception.

[21] Whilst it is so that the unilateral error of a contracting party which is caused by the other party may entitle the mistaken party to rescind the contract this can only occur if the mistake is material and if the mistaken party can show that he would not have entered into the agreement if he had known the truth. (See for example ***The Law of Contract in South Africa***: *R H Christie*, 5th ed p. 319 and 320.)

[22] In respect of the first of these requirements, that the mistake must be material, Chapman says that Schaefer explained to them that the document which they were about to sign was an agreement in terms of which "Levy Solutions" would buy the "debt books" from Allan Hendricks Body Corporate. He says that he understood this to mean that "Levy Solutions" would buy the existing debts of the levy defaulters of the body corporate. Even if I were to accept these averments for purposes of the adjudication of the application I do not think that such a suggestion is so materially inconsistent with the content of the loan agreement as to vitiate the agreement. The loan agreement does indeed provide for an "initial advance" (i.e. the existing debt of the levy defaulters) which was immediately payable to the applicant after signature in an amount "equal to the levies which are due and unpaid as at the date of signature". The loan was indeed secured by a cession *in securitatem debiti* of all the claims, rights of action and receivables which the body corporate had at the time. The first respondent was authorised to collect such outstanding levies inter alia, for the purpose of repaying the advance. It seems to me that the understanding of Chapman was materially in accordance with a part of the contract. It is, however, only one part of the contract.

[23] Even if I err in respect of the conclusion to which I have come in respect of the first requirement it remains incumbent upon the applicant

to establish that the trustees would not have entered into the agreement had they known the truth. There is no averment at all in the papers from which this conclusion can be drawn. On the contrary, on the facts which I am bound to accept for purposes of the adjudication of this application the content of the agreement was fully explained to them and their appreciation of the nature of the contract is borne out by the resolution which all the trustees signed and which is annexed to the contract.

<u>Constitutional attack on validity of the contract</u>

[24] Mr ***Abrahams*** argues, in addition, that the contract falls to be set aside on the basis that it is contrary to public interest. He has referred me to ***Barkhuizen v Napier*** 2007 (5) SA 323 (CC) at para [30] which reads as follows:

> "... the proper approach to the constitutional challenges to contractual terms is to determine whether the term challenged is contrary to public policy as evidenced by the constitutional values, in particular, those found in the Bill of Rights. This approach leaves space for the doctrine of *pacta sunt servanda* to operate, but at the same time allows courts to decline to enforce contractual terms that are in conflict with constitutional values even though the party may have consented to them."

[25] In support of this argument Mr ***Abrahams*** argues that it is

apparent from the papers that the applicant was in dire financial trouble at the time that the loan agreement was entered into and that the trustees accordingly found themselves in an unequal bargaining position. In the face hereof, it is argued, the first respondent accepted the term in the agreement which allowed it to be instructed as managing agent of the applicant "for so as long as the body corporate remains indebted" to the second respondent. In doing so, it is argued, the first respondent acted in bad faith.

[26] The difficulty with this argument is that there is no constitutional challenge whether to the contract as a whole or to any term of the contract contained in the founding papers. In application proceedings the affidavits serve the purpose of both pleadings and evidence. An applicant is required in his founding papers to make out a *prima facie* case. In doing so he is required to set out all the facts necessary to establish such a *prima facie* case in as complete a way as the circumstances demand. He cannot, however, "throw a mass of material" at respondent and expect the latter to discover for himself some cause of action lurking therein. (See ***Lipschitz and Schwartz NNO v Markowitz*** 1976 (3) SA 772 (W) 775H-776A; and ***Moleah v University of Transkei and Others*** 1998 (2) SA 522 (Tk HC) 532-535.) If a legal point is to be taken it too must be properly raised in affidavits. Thus in ***Naude and Another v Fraser*** (1998) 3 All SA 239 (A) at 260e-g Schutz JA stated:

> "There is little point in granting a person a hearing if he does not know how he is concerned, what case he has to meet. One of the numerous manifestations of the fundamental principle is the sub-rule that he who relies on a particular section of a statute must either state the number of the section and the statute, or formulate his case sufficiently clearly so as to indicate what he is relying on: *Yannakou v Appollo Club* 1974 (1) SA 614 (A) at 623G. As the proposition itself indicates there is no magic in naming numbers. The significance is that the other party should be told what he is facing."

[27] The position is no different when reliance is placed upon provisions of the Constitution. Thus Van Dijkhorst J held in ***Prokureursorde van Transvaal v Kleynhans*** 1995 (1) SA 839 (T) at 849A-B:

> "Dit is myns insiens vir die behoorlike ordening van die praktyk absoluut noodsaaklik dat konstitusionele punte nie deur advokate as laaste debatspunt uit die mou geskud word nie maar pertinent in die stukke as geskilpunte geopper word sodat dit volledig uitgepluis kan word deur die partye ten einde die Hof in staat te stel om dit behoorlik te bereg."

(See also ***Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd*** 2012 (1) SA 256 (CC).)

[28] In all the circumstances I do not think that it is open to the

applicant in argument to raise this constitutional issue which is dependent upon considerations of public policy without having afforded the respondents the opportunity to deal in their affidavits with this aspect, in particular their alleged bad faith.

[29] In the circumstances the attack upon the validity of the loan agreement must also fail.

Cancellation of Management Agreement

[30] The applicant seeks a declarator that the management agreement with the first respondent is deemed to be cancelled with effect 31 March 2011. In argument before me in support of this contention Mr ***Abrahams*** does not place reliance on any of the factual averments in the papers. It is again an argument founded on facts not canvassed in the papers. The attack is upon clause 19.3 of the loan agreement which is set out earlier herein. It is common cause that the applicant has not settled its entire indebtedness to the second respondent, however, it is argued that clause 19.3 is not valid in law.

[31] The loan agreement with the second respondent provides that the first respondent shall be the managing agent for the applicant as contemplated in rule 46(1) of Annexure A to the Regulations promulgated

in terms of the Sectional Titles Act, 95 of 1986. Mr ***Abrahams*** contends in argument that paragraph 19.3.1 of the loan agreement, which is set out above, is an unlawful clause in terms of section 90(2)(a)(ii) of the National Credit Act 34 of 2005 in that it deceived the trustees of the applicant body into believing that they could terminate the services of the first respondent in terms of Rule 46(2)(a) of Annexure 8 to the Regulations promulgated in terms of the Sectional Titles Act 95 of 1986.

[32] This argument too is struck by the same difficulty as the constitutional argument. There is no reference at all in the papers to section 90 of the National Credit Act. There is no allegation that the clause is unlawful nor is there an averment of deceit.

[33] Section 90(2)(a)(ii) of the National Credit Act, which Act does find application to the loan agreement, provides that a provision in a credit agreement is unlawful if the general purpose or effect is to deceive the consumer. This is not a purely legal argument. The respondents have not been afforded the opportunity to respond to the allegation relating to the purpose or the effect of the term nor to the alleged deceit. In the circumstances section 90 of the National Credit Act does not arise in the present matter and no other argument is advanced why the provisions of clause 19 of the loan agreement should not be honoured.

Interdict

[34] The applicant seeks an interdict in terms of para 2.4 of the Notice of Motion. To obtain an interdict the applicant is required too make out a right on the papers.

[35] On behalf of the applicant it is argued that the first respondent has instituted legal action against several of the applicant body's members on the basis that they are levy defaulters. This is borne out by the papers. Mr ***Abrahams*** argues, however, that there are clear indications of doubt about whether those members are in actual fact in default.

[36] In this regard the deponent on behalf of the applicant, in its founding affidavits, states as follows:

> "There is every indication that the statements of account for the members of the Applicant body is in disarray. In some instances payments made to the First Respondent was not reflected on the owners' accounts, resulting in interest being charged on account that were fully paid-up. In other instances paid-up owners were handed over to the First Respondent's attorneys for recovery of arrear levies."

These averments are denied by the respondents.

[37] The facts which are required to be alleged in the founding papers in application proceedings must be primary facts not merely secondary facts. Primary facts are those capable of being used for drawing of inferences as to the existence or non-existence of other facts. Secondary facts, in the absence of primary facts on which they are based, are nothing more than the deponents own conclusions. (See ***Harms:*** *Civil Procedure in the Supreme Court; Commentary on the Uniform Rules* p. B-47: and ***Die Dros (Pty) Ltd and Another v Telefon Beverages CC and Others*** (2003) 1 All SA 164 (C) para [28].)

[38] There is no reference in the founding papers to any individual instance where payments made to the first respondent were not reflected on the owners' accounts. There is not a single instance referred to in the papers where interest was being charged on accounts that were fully paid up. In respect of the alleged hand over of members to the first respondent's attorneys reference is made to the matter of one Le Grange of Unit 68 within the scheme. In respect of Mr Le Grange Jaggers states as follows:

> "It is not clear what the amount of the arrear levies for this member was. The member claims to have paid this arrear amount, yet the First Respondent's attorneys continued with legal action which resulted

> in default judgment as well as a warrant of execution against the unit."

[39] On behalf of the respondents these allegations too are denied. Mr Le Grange did not make an affidavit.

[40] It follows that in my view these averments on behalf of the applicant do not assist. They are no more than the conclusions of Mr Jaggers himself.

[41] Even if I were to accept all these allegations I do not think that it can justify the relief sought. Where the first respondent contends that it has a valid claim against any of the members of the applicant he is entitled in law to ask a court to adjudicate upon his case. Section 34 of the Constitution provides that:

> "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent or impartial tribunal or forum."

[42] It is that forum where the summons is ultimately issed which will

determine whether or not there is merit in the claim. I do not think that the applicant can establish a clear right to prevent either of the respondents from instituting action in terms of their contract against any defaulting member. Such defaulting member is entitled to raise any dispute which it may have and to require of the respondents to prove their case in the proper forum.

[43] Mr ***Abrahams***, however, seeks to bolster his argument in respect of the relief sought in paragraph 2.4 of the Notice of Motion with reference to section 26 of the Constitution. He argues that members who face legal action may have their property sold in execution. These properties, so he submits, are their homes and accordingly they stand to suffer major prejudice.

[44] Again, section 26 of the Constitution has not been raised in the papers at all. In any event, it seems to me that the applicant is in this respect too placing the cart before the horse. Questions of execution against residential property arise only where judgment has being granted. It too is a matter for consideration of the court hearing an application to declare the property executable. If any property owner disputes the claim for execution or raises relevant circumstances which militate against an order for execution then it is a matter for the court hearing the application to determine.

[45] In all the circumstances I do think that the applicant's have made a case for the relief which they seek and the application accordingly falls to be dismissed.

Costs

[46] Mr ***Scott***, who appears on behalf of the respondents, has urged me to make a punitive costs order against the applicant's in this matter. He has referred to the manner in which the application was launched, as a matter of urgency, without any reference in the papers to a basis for urgency. He relies too on the fact that a rule *nisi* and an interim interdict was sought and obtained *ex parte*, which rule was discharged at the second appearance. Mr ***Scott*** argues that there is clearly no merit in the application and that it should never have been brought at all.

[47] That may be so, however, to grant a punitive costs order in this matter would strike merely at the individual members of Allan Hendricks who would in the final analysis be required to pay for the errors of their trustees. There is nothing in the papers to show that they were aware of the manner in which this application was conducted or that they bear any blame in that regard. In the exercise of my discretion I do not think that this is an appropriate matter to grant a punitive costs order.

[48] In the result I make the following order:

1. The application is dismissed.
2. The applicant is ordered to pay respondents' costs of the application.

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Applicant: Mr *Abrahams* instructed by Nash van Dayar Attorneys, Port Elizabeth

For Respondents: Adv *P Scott SC* instructed by Pierre Kitching Attorneys, Port Elizabeth